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09/841,320	04/23/2001	Ranjit N. Notani	020431.0771	5982

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EXAMINER

FISCHER, ANDREW J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/841,320

Applicant(s)

NOTANI ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 11-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 26-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicants' amendments filed October 3, 2005 and January 26, 2006 have been entered. Accordingly, claims 1-24 and 26-29 remain pending.
2. Claims 11-24 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 28, 2004.
3. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

### ***Claim Rejections - 35 USC §101***

5. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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6. Claims 1-10 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. The claims do not produce a useful, concrete, tangible result.

Because the claimed applications in claim 1 do not produce a tangible result.

7. Claims 26-28 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In particular, claims 26-28 are directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention.

***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

8. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-10 and 26-29 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

a. In claim 3, it is unclear if the list presented is conjunctive or disjunctive.

b. In claims 1, 15, 24, and 25 are indefinite because the phrase “normal capacity” is indefinite because it is unclear how one of ordinary skill in the art determines what is (and what is not) normal capacity. The Examiner respectfully recommends reviewing all examined claims for this issue.

c. In claims 26, 29, the phrase “at least these enterprises” is indefinite because it is not known what is meant by “at least these enterprises . . . .” The Examiner respectfully recommends reviewing all examined claims for this issue.

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d. In claims 26-29, the phrase “to the first entity of a resolution expected” is indefinite because it doesn’t make grammatical sense.

e. Claims 26-28 are directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention. It is therefore unclear whether Applicants are claiming a process or a machine. For prior art purposes, the Examiner will interpret the claims as product claims.

f. In claims 26-29, it is unclear if the list of actions is a conjunctive list of actions or disjunctive list of actions.

### *Claim Rejections - 35 USC §102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-10 and 26-29 are rejected under 35 U.S.C. §102(e) as being anticipated by Salvo et. al. (U.S. 6,341,271 B1)(“Salvo”) and White’s How Computers Work. Salvo discloses a planning application that is a supply chain planning engine and a manager application within 112 and 114 that are operable to do many things. White is cited simply to show the features of a computer that are inherent in Salvo.

*Claim Rejections - 35 USC §103*

12. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all

obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-10, and 26-29 as understood by the Examiner, are rejected under 35 U.S.C.

§103(a) as being unpatentable over Huang et. al. (U.S. 6,151,582 (“Huang”) in view of Greene’s

Production and Inventory Control Handbook, 3<sup>rd</sup> Ed., (“Greene”); Dobler’s Purchasing and

Supply Management, Text & Cases, 6<sup>th</sup> Ed., and White’s How Computers Work. Huang

discloses a planning application which is a supply chain planning engine **160**; a manager

application; status data as demand data **148**; and resolving at least a portion of the capacity

extreme (Huang optimizes production) Huang does not directly disclose precisely as claimed an

attempt at least a portion of the capacity. Greene in Chapter 10 directly teaches “attempts” at

“resolving” capacity issues.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Huang as taught by Greene to include attempts at least a portion of the capacity extreme through interactions. Such a modification would have helped improved decision to accomplish the production plans as the most affordable costs.

14. White is cited simply to show the features of a computer that are inherent in Huang.

Dobler is also cited to show those features of Huang that are inherent.

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15. The Examiner maintains that Applicants are not their own lexicographer. This issue will not be further addressed by the Examiner.

The Examiner maintains his position that all examined claims are product claims. This issue will not be further addressed by the Examiner.

The Examiner maintains his position that all examined claims do not contain any product-by-process limitations. This issue will not be further addressed by the Examiner.

16. The Examiner maintains his position regarding functional language. This issue will not be further addressed by the Examiner.

### ***Response to Arguments***

17. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

18. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, This action is made final. See MPEP §706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R.

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§1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

All references listed on form PTO-892 are cited in their entirety.

20. Unless expressly noted otherwise by the Examiner or other USPTO official, the following four (4) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action *and* any future office action(s), communication(s), or other correspondence provided by the USPTO: MPEP citations to Chapter 2300 are from the MPEP 8<sup>th</sup> Edition, Rev. 4, October 2005; citations to Chapters 200-900, 1200-1400, and 1700-1900, 2100, 2200, 2600 are from the MPEP 8<sup>th</sup> Edition, Rev. 3, August 2005. MPEP citations to Chapters 100, 1000, 1100, 1500, 2000, 2500, and 2700 are from the MPEP 8<sup>th</sup> Edition, Rev. 2, May 2004. MPEP citations to Chapters 1600, 2300, 2400 are from MPEP 8<sup>th</sup> Edition, August 2001.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Fischer whose telephone number is (571) 272-6779.

The examiner can normally be reached on 9:00 AM to 5:00 PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrew J Fischer  
Primary Examiner  
Art Unit 3627

AJF  
April 12, 2006